Lsp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5592 of 2007

M/s. Sanghvi Engineering Company Ltd. ..Petitioner

V/s.

Mr. Pratap Pandurang Patil ..Respondent

Mr. C.K. Tripathi for the Petitioner

Mr. Rajesh Gehani & Mr.D.D.Naik for the Respondent

CORAM : B.H.MARLAPALLE,J.
DATED : 29th November, 2007

P.C.

Heard Mr. Tripathi, the Learned Counsel for the Petitioner. The Respondent had filed Comp(ULP)No. 94/1997 before the Labour Court challenging the termination of his service orally w.e.f. 7-12-1996. In the said complaint, an application was filed by the present petitioner company contending that the Complainant was not its employee and there was no employer-employee relationship. The Labour Court by its order dated 2-1-2006 decided the said preliminary issue and answered against the company. It held that the Complainant was in the employment of the company. This order passed by the Labour Court came to be challenged in Revision Application (ULP)No. 102/2006 and the Revision came to be dismissed by the Learned Member of

the Industrial Court on 8-6-2007. Hence, this petition under Article 227 of the Constitution.

2. Firstly, the petition against an inter locutory order need not be entertained. Secondly, the contention of the company is that the Respondent was employed as a contractor. If the Respondent was employed as a contractor, obviously he would have some employees working for the company and there was none. The company's contention was that the complainant was employed on contract basis but such a contract cannot make the complainant a contractor.

3. The learned Judge of the Labour Court referred to some of documents placed on record by the company itself and one of them was the certificate dated 23-11-1993. The certificate is not denied and it reads as under:-

> "This is to certify that Mr. Pratap P.Patil is working with us since last 3 years. At present his income is Rs. 4000/-. This is for your information."

4. The Learned Counsel for the Petitioner submitted that the term 'is working with us since last 3 years' does not mean that he is in the employment of the company and it ought to be read as that he is providing

contract service. This is a fallacious argument which has been turned down by both the Courts below. The concurrent findings recorded by both the Courts below on the employer-employee relationship are supported by the documentary evidence placed on record and, therefore, the impugned order passed by the Labour Court and confirmed by the Industrial Court does not call for any interference under Article 227 of the Constitution.

5. Petition is rejected summarily. Trial of the complaint is expedited.

[B.H.MARLAPALLE,J.]